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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151223999-6135-01]

RIN 0648-XE379

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustments to 2016 Annual Catch Limits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary final rule; adjustment of specifications.

SUMMARY: This action adjusts initial 2016 annual catch limits for the Atlantic herring fishery to account for the under-harvest and overages of fishing year 2014 sub-annual catch limits. The 2015 specifications will remain in place after December 31, 2015, until NMFS sets new specifications through a 2016-2018 fishery specifications final rule, which NMFS expects to publish in the spring of 2016. In accordance with the regulations implementing the Atlantic Herring Fishery Management Plan, this action uses final herring catch data from 2014 for determining what under-harvest and overages occurred in fishing year 2014, and adjusts the initial 2016 annual catch limits for the four management areas (Areas 1A, 1B, 2, and 3). In addition, this action adjusts the initial 2016 stock-wide annual catch limit to account for any management area overages incurred in 2014. In order to ensure that carryover pounds do not cause overfishing of the herring resource, area-specific carryover does not increase the initial

stock-wide catch allocation. This action is necessary to ensure that NMFS accounts for herring catch consistent with the requirements of the Atlantic Herring Fishery Management Plan.

DATES: Effective [*insert date of publication in the Federal Register*], through December 31, 2016.

ADDRESSES: Copies of supporting documents, including the 2013-2015 Specifications/Framework 2 to the Atlantic Herring Fishery Management Plan (FMP), are available from the Sustainable Fisheries Division, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930, telephone (978) 281-9315, or online at: <http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/atlherring/index.html>

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, 978-281-9244, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic herring harvest in the United States is managed under the FMP developed by the New England Fishery Management Council (Council). The FMP divides the stock-wide herring annual catch limit (ACL) among three management areas, one of which has two sub-areas. It divides Area 1 (located in the Gulf of Maine (GOM)) into an inshore section (Area 1A) and an offshore section (Area 1B). Area 2 is located in the coastal waters between Massachusetts and North Carolina, and Area 3 is on Georges Bank (GB). The FMP considers the herring stock complex to be a single stock, but there are inshore (GOM) and offshore (GB) stock components. The GOM and GB stock components segregate during spawning and mix during feeding and migration. Each management area has its own sub-ACL to allow greater

control of the fishing mortality on each stock component.

NMFS issued a final rule that implemented Amendment 4 to the FMP (76 FR 11373, March 2, 2011) to address ACL and accountability measure (AM) requirements. As a way to account for ACL overages in the herring fishery, Amendment 4 established an AM that provided if the catch of herring exceeds any ACL or sub-ACL, NMFS subsequently deducts the overage from the corresponding ACL/sub-ACL in the year following the catch overage determination. Amendment 4 also specified that NMFS will announce overage deductions in the **Federal Register** prior to the start of the fishing year, if possible.

We also published a final rule implementing Framework 2 to the FMP and the 2013-15 specifications for the herring fishery on October 4, 2013 (78 FR 61828). Among other measures, Framework 2 allows for the carryover of unharvested catch in the year immediately following the catch determination. Up to 10 percent of each sub-ACL may be carried over, provided the stock-wide catch did not exceed the stock-wide ACL. The carryover provision allows a sub-ACL increase for a management area, but it does not allow a corresponding increase to the stock-wide ACL.

NMFS was unable to set final 2016 catch limits for the herring fishery by the January 1, 2016, start of the fishing year. As a result, the 2015 specifications will remain in place until NMFS implements specifications for the 2016-2018 herring fishing years, likely the spring of 2016. Table 1 outlines the 2015 herring catch allocations, including deductions for research set-aside, which are currently in place for the 2016 fishing year.

Table 1. 2015 Herring sub-ACLs (mt) effective at the start of 2016

	2015 sub-ACLs	Research Set-Aside (3	2015 Adjusted sub-
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		percent of Sub-ACLs)	ACL
Area 1A	31,200	936	30,264
Area 1B	4,600	138	4,462
Area 2	30,000	900	29,100
Area 3	42,000	1260	40,740
Stock-wide	107,800	3,234 (total of all sub-ACL set-asides)	104,566

Provisions Implemented through this Final Rule

After completing the 2014 catch determination in December 2015, NMFS determined that in 2014 the herring fishery overharvested the sub-ACL in herring management Area 1B, but caught less than its allocated catch in the three remaining herring management areas (Areas 1A, 2, and 3). As a result, this action deducts the overage amount from the 2016 herring catch limit in herring management Area 1B and adds unharvested 2014 catch to the 2016 herring catch limits for the remaining three areas. This carryover equals to the amount of each area's underages (or up to ten percent of the allocated 2014 sub-annual catch limit, whichever is less) for herring management Areas 1A, 2, and 3. Table 2 provides the harvest details for 2014 and initial adjustments for 2016 herring catch limits.

Table 2. Herring sub-ACLs, Catch, and Carryover (mt)

	2014 sub-ACLs	2014 Catch	Underage or Overage	Carryover (max 10 Percent of 2014 sub-ACLs*) or Overage Deduction	2015 Adjusted sub-ACLs (from Table 1)	Initial 2016 sub-ACLs Adjusted for Carryover or Overage
Area 1A	33,031	32,898	133	133	30,264	30,397
Area 1B	2,878	4,399	-1,521	-1,521	4,462	2,941
Area 2	28,764	19,626	9,138	3,000	29,100	32,100
Area 3	39,415	36,323	3,092	3,092	40,740	43,832
Stock-wide	104,088	93,247	10,841	NA	104,566	103,045**

* Maximum carryover, where applicable, is based on 10 percent of initial 2014 ACLs: Area 1A, 31,200 mt; Area 1B, 4,600 mt; Area 2, 30,000 mt; and Area 3, 42,000 mt.

** Although the initial 2016 stock-wide ACL cannot be increased by carryover, it is deducted by the amount of overage in Area 1B.

NMFS calculated the amount of herring landings in 2014 based on dealer reports (Federal and state) of herring purchases, supplemented by vessel trip reports (VTRs) and vessel monitoring system (VMS) reports (Federal and State of Maine) of herring landings. We generally use dealer reports to estimate landings; however, if the amount of herring reported via VTR exceeded the amount of herring reported by the dealer by 10 percent or more, we assumed that the dealer report for that trip was in error, and used the VTR report instead. Landings were assigned to individual herring management areas using VMS reports, or latitude and longitude coordinates from VTR reports when a VMS report was not available. We used recent fishing activity to infer herring management areas for records without a corresponding VTR or VMS catch report.

Herring discards were estimated by extrapolating discards from herring trips observed by the Northeast Fisheries Observer Program to all herring trips (observed and unobserved) according to gear and herring management area. Research Set-Aside herring catch was deducted from total herring catch and not counted towards the commercial herring quota.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the NMFS Assistant Administrator has determined that this final rule

is consistent with the FMP, other provisions of the MSA, and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action. Notice and comment are impracticable and contrary to the public interest because a delay would potentially impair achievement of the management plan's objectives of preventing overfishing and achieving optimum yield due to vessels' ability to harvest available catch allocations. Further, this is a nondiscretionary action required by provisions of Amendment 4 and Framework 2, which were previously subject to public comment. This action simply effectuates this mandatory calculation. The proposed and final rules for Framework 2 and Amendment 4 explained the need and likelihood for adjustments to the sub-ACLs based on final catch numbers. Framework 2, specifically, provided prior notice of the need to distribute carryover catch. These actions provided a full opportunity for the public to comment on the substance and process of this action.

Allowing for prior notice and public comment on this adjustment is also impracticable because the herring fishing year already began on January 1, 2016. To prevent confusion and potential overharvests, it will be in the best interest of the fleet and the herring resource to set the adjusted sub-ACLs as soon as possible. Three areas are currently closed and will open on either May 1 (i.e., Management Areas 1B and 3) or June 1 (i.e., Management Area 1A). Management Area 2 is already open and subject to a lower catch limit until this action is implemented. Putting in place the adjusted initial sub-ACLs as soon as possible will provide the fleet with this opportunity to develop their business plans in sufficient time to facilitate their harvest of available catch.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date

and make the rule effective upon publication in the **Federal Register**. The 2016 herring fishing year began on January 1, 2016. To prevent confusion and potential overharvests, it will be in the best interest of the fleet and the herring resource to have the adjusted sub-ACLs in place as soon as possible. Due to seasonal closures of Area 1A and 1B, and closure of most of Area 3 because of haddock catch, only Area 2 is open and it is subject to a lower catch limit until this action is implemented. Putting in place the adjusted initial sub-ACLs as soon as possible will provide the fleet with this opportunity to develop their business plans in sufficient time to facilitate their harvest of available catch. Accordingly, any delay in the rule's effectiveness would be contrary to the conservation objectives of the MSA and the FMP.

This action is required by 50 CFR part 648 subpart K and is exempt from review under Executive Order 12866.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 2, 2016

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